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In re Application of : DECISION ON
McDevitt et al :
Application No.: 10/522,926 :
PCT No.: PCT/US03/23131 :
Int. Filing Date: 24 July 2003 : PETITION UNDER
Priority Date: 24 July 2002 :
Attorney's Docket No.: 5936-11112 :
For: CAPTURE AND DETECTION OF :
MICROBES BY MEMBRANE METHODS : UNDER 37 CFR 1.182

This is in response to applicants' submission, "PETITION TO CONVERT A NATIONAL APPLICATION FILED UNDER 37 USC 371 TO AN APPLICATION FILED UNDER 35 U.S.C. 111(a)," filed 04 March 2005, which is being treated as a petition under 37 CFR 1.182. The petition requests the above referenced application be converted from a national stage application filed under 35 U.S.C. 371 to a national application filed under U.S.C. 111(a). The \$400.00 petition fee has been charged to Attorney's Docket No.: 5936-11110.

BACKGROUND

On 24 July 2003, applicants filed international application PCT/US03/23131, which claimed priority of an earlier application filed 24 July 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 24 January 2005.

On 24 January 2005, applicants filed a transmittal letter (Form PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and a copy of the international publication.

On 04 March 2004, applicants filed a petition to convert the above national stage application filed under 37 USC 371 to an application filed under 35 USC 111(a).

DISCUSSION

The application papers filed on 24 January 2005 clearly and unambiguously indicated that the application was being filed under 35 U.S.C. 371 as the national stage application of international application No. PCT/US03/23131 by use of the

"TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE CONCERNING A FILING UNDER 35 U.S.C. 371" as the transmittal letter. Since applicants' transmittal letter did request treatment under 35 U.S.C. 371, included the basic national fee and no conflicting instructions were provided, the application was properly processed under 35 U.S.C. 371 and 37 CFR 1.495 rather than 35 U.S.C. 111(a) and 37 CFR 1.53.

The present application has been properly processed by the Office as a national stage application under 35 U.S.C. 371, as requested and pursuant to 37 CFR 1.495. Accordingly, it would not be appropriate to consider the conversion of the application to an application under 35 U.S.C. 111(a) at this time.

Furthermore, U.S. statutes and regulations do not make specific provision for the requested action and as such, the Office does not grant such petitions for conversion as a mere matter of course. The Office will only grant such petitions upon a showing by applicant of sufficient cause (i.e., the loss of patent rights) where no other remedy is available. In the present case, applicant requested that the application be converted but has not demonstrated that the applicant will suffer a loss of any right if the petition to convert is not granted.


In sum, the application filed on 24 January 2005 was properly treated as an application under 35 U.S.C. 371 (37 CFR 1.495). Applicants' petition to convert the application from a filing under 35 U.S.C. 371 to an application under 35 U.S.C. 111(a), cannot be granted. Accordingly, national stage processing will continue to proceed.

CONCLUSION

The petition under 37 CFR 1.182 for reasons noted above is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition is desired, applicant must file a request for reconsideration within a **TWO (2) MONTH** non-extendable time period from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition under 37 CFR 1.182."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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